

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2612

Introduced by Committee on Agriculture (Galgiani (Chair), Tom Berryhill (Vice Chair), Conway, Ma, ~~and Mendoza, and Yamada~~)

February 19, 2010

~~An act to amend Sections 19204, 19220, and 19312 of the Food and Agricultural Code, relating to animals.~~ *An act to amend Sections 19204, 19220, 19312, 46003, 46004.1, 46009, 46013, 46013.1, 46013.2, and 46014.1 of the Food and Agricultural Code, relating to agriculture.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2612, as amended, Committee on Agriculture. Slaughtered animals: ~~pet food~~: *food*: *organic products*: *registration*.

~~Existing~~

(1) ~~Existing~~ law requires a person engaged in the business of operating a collection center to obtain a license from the Department of Food and Agriculture for each collection center operated. "Collection center" is defined to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant. Existing law makes a violation of these provisions a crime.

This bill, instead, would define "collection center" to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant or pet food processor. Because this bill would change the definition of an existing crime, it would impose a state-mandated local program.

~~Existing~~

(2) *Existing law* requires persons engaged in certain businesses, including, among others, rendering, pet food processing, and operating a collection center, to obtain a license from the department. Existing law provides that those licenses are valid for a year from the date of issuance.

This bill, instead, would provide that those licenses shall expire on December 31 of each year.

Existing law requires any person or entity who engages in the transportation of inedible kitchen grease, as defined, to be registered with the department. An applicant for registration as a transporter of inedible kitchen grease is required to include a registration fee of \$100, except for any renderer who registers.

This bill would also exempt a collection center that registers from this registration fee.

(3) *Existing law, the California Organic Products Act of 2003, provides that persons engaged in the production or handling of raw agricultural products sold as organic or the processing or handling of processed food sold as organic shall register with the Secretary of Food and Agriculture. Under existing law the registration must include, among other things, a map showing the location and dimensions of the facility or farm where the products are produced. If the registrant has not had control of the property for 36 months, existing law requires that the registrant provide the land use history of the property for the last 36 months from the previous owners. If the registrant does not own the property, existing law requires the registrant to provide documentation from the owner granting permission for the parcel to be registered as organic.*

This bill would provide that the registration requirement of providing a map would only apply to exempt producers and would define an exempt producer as a producer whose annual gross agricultural income from organic sales totals \$5,000 or less. This bill would provide that the above requirements regarding prior land use and permission from the owner would only apply to exempt producers or exempt handlers, and would define an exempt handler as a handler whose annual gross agricultural income from organic sales totals \$5,000 or less.

(4) *Under existing law a producer required to register with the secretary is required to list all substances applied to the crop, soil, or irrigation water as part of the registration.*

Under this bill only producers whose annual gross agricultural income from organic sales totals \$5,000 or less would be required to include this information in their registration.

(5) Existing law establishes a schedule of fees that the registrant is required to pay to the secretary based on the gross sales of the registrant.

This bill would allow the secretary to require the registrant to submit their gross sales by commodity and acreage and to provide the exact dollar amount of sales of \$25,000,001 or more.

This bill would also authorize the secretary to adopt regulations that supersede the registration provisions applicable to persons engaged in organic production, processing, and handling to the extent reasonably necessary to provide an online system of registration.

(6) Existing law requires the secretary to establish the California Organic Products Advisory Committee to advise the secretary regarding his or her responsibilities under the act. Under existing law the committee is comprised of 15 members and allows the members to have alternates. Existing law provides that 6 members and their alternates must be producers, 2 processors, 2 consumer representatives, 2 technical representatives, one wholesale distributor, one environmental representative, and one retail representative. Existing law provides that alternates at large may be appointed as specified.

This bill would delete the provisions regarding the appointment of alternates at large.

(7) This bill would make other conforming changes.

~~The~~

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 19204 of the Food and Agricultural Code
- 2 is amended to read:
- 3 19204. "Collection center" means a receiving area for the
- 4 temporary storage of animal carcasses, packinghouse waste, or

1 other products before transportation to a licensed rendering plant
2 or pet food processor.

3 SEC. 2. Section 19220 of the Food and Agricultural Code is
4 amended to read:

5 19220. A license granted under this chapter shall expire on
6 December 31 of each year.

7 SEC. 3. Section 19312 of the Food and Agricultural Code is
8 amended to read:

9 19312. (a) Registration shall be made with the department and
10 shall include all of the following:

11 (1) The applicant's name and address.

12 (2) A description of the operations to be performed by the
13 applicant.

14 (3) The vehicles to be used in the transportation.

15 (4) A registration fee of one hundred dollars (\$100).

16 (5) A list of the names of the drivers employed by the transporter
17 who transport inedible kitchen grease subject to this article and
18 their drivers' license numbers.

19 (6) Any other information that may be required by the
20 department.

21 (b) Any renderer or collection center that registers pursuant to
22 this article is not required to pay the fee prescribed in this section.

23 (c) The department may refuse to issue an original or renewal
24 registration certificate to any applicant for which the grounds
25 specified in subdivisions (a) to (e), inclusive, of Section 19314
26 exist.

27 (d) (1) The applicant may appeal the decision of the department
28 to refuse to register the applicant.

29 (2) The department shall establish procedures for the appeals
30 process, to include a noticed hearing.

31 (3) The department may reverse a decision to refuse to register
32 the applicant, upon a finding of good cause to do so.

33 SEC. 4. *Section 46003 of the Food and Agricultural Code is*
34 *amended to read:*

35 46003. (a) The secretary shall establish an advisory committee,
36 which shall be known as the California Organic Products Advisory
37 Committee, for the purpose of advising the secretary with respect
38 to his or her responsibilities under this act and Article 7
39 (commencing with Section 110810) of Chapter 5 of Part 5 of
40 Division 104 of the Health and Safety Code.

(b) The advisory committee shall be comprised of 15 members. Each member may have an alternate. Six members and their alternates shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members and their alternates shall be processors, one member *and his or her alternate* shall be ~~a wholesale distributor~~ *distributors*, two members *and their alternates* shall be consumer representatives, one member *and his or her alternate* shall be ~~an environmental representative~~ *representatives*, two members *and their alternates* shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member *and his or her alternate* shall be ~~a retail representative~~. ~~Alternates at large may be appointed to serve in the absence of any of the following categories: two alternates for producers, one alternate for processors, one alternate for consumer, and one alternate for technical representatives.~~ Except for the consumer, environmental, and technical representatives, the members of the advisory committee and their alternates shall have derived a substantial portion of their business income, wages, or salary as a result of services they provide which directly result in the production, handling, processing, or retailing of products sold as organic for at least three years preceding their appointment to the advisory committee. The consumer and environmental representatives and their alternates shall not have a financial interest in the direct sales or marketing of the organic product industry and shall be members or employees of representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives and their alternates shall not have a financial interest in the production, handling, processing, or marketing of the organic products industry. The technical representatives may be involved in organic research or technical review providing they have no financial benefit from results of the research project or technical review.

(c) An alternate member shall serve at an advisory committee meeting only in the absence of, and shall have the same powers and duties as, the category whom he or she is representing as alternate, except for duties and powers as an officer of the committee. The number of alternates present who are not serving

1 in the capacity of a member shall not be considered in determining
2 a quorum.

3 (d) An alternate member may serve at an advisory committee
4 subcommittee meeting only in the absence of, and shall have the
5 same powers and duties as, the member whom he or she is
6 designated as alternate, except for duties and powers as a
7 subcommittee chairperson.

8 (e) The members of the advisory committee and their alternates
9 described in subdivision (b) shall be reimbursed for the reasonable
10 expenses actually incurred in the performance of their duties, as
11 determined by the advisory committee and approved by the
12 secretary.

13 (f) The secretary or his or her representative, ~~State Director of~~
14 ~~Health Services~~ *Public Health Officer*, or his or her representative,
15 and a county agricultural commissioner may serve as ex officio
16 members of the advisory committee.

17 *SEC. 5. Section 46004.1 of the Food and Agricultural Code is*
18 *amended to read:*

19 46004.1. Unless defined pursuant to the National Organic
20 Program (NOP), the following words and phrases, when used in
21 this act, shall have the following meanings:

22 (a) "Act" means this chapter. It also means the federal Organic
23 Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and
24 the regulations adopted pursuant to the federal Organic Foods
25 Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

26 (b) "Categorical products" means categories of products of like
27 commodity such as apples, salad products, etc. and does not require
28 variety specific information.

29 (c) "Enforcement authority" means the governmental unit with
30 primary enforcement jurisdiction, as provided in Section 46008.

31 (d) "*Exempt handler*" means a handling operation that sells
32 agricultural products as "organic" but whose gross agricultural
33 income from organic sales totals five thousand dollars (\$5,000)
34 or less annually.

35 (e) "*Exempt producer*" means a production operation that sells
36 agricultural products as "organic" but whose gross agricultural
37 income from organic sales totals five thousand dollars (\$5,000)
38 or less annually.

39 (d)

1 (f) "Handle" means to sell, process, or package agricultural
2 products.

3 ~~(e)~~

4 (g) "Handler" means any person engaged in the business of
5 handling agricultural products, but does not include final retailers
6 of agricultural products that do not process agricultural products.

7 ~~(f)~~

8 (h) "Handling operation" means any operation or portion of an
9 operation, except final retailers of agricultural products that do not
10 process agricultural products that (1) receives or otherwise acquires
11 agricultural products, and (2) processes, packages, or stores
12 agricultural products.

13 ~~(g)~~

14 (i) "NOP" means the National Organic Program established
15 pursuant to the federal Organic Foods Production Act of 1990 (7
16 U.S.C. Sec. 6501 et seq.) and the regulations adopted for
17 implementation.

18 ~~(h)~~

19 (j) "Person" means any individual, firm, partnership, trust,
20 corporation, limited liability company, company, estate, public or
21 private institution, association, organization, group, city, county,
22 city and county, political subdivision of this state, other
23 governmental agency within the state, and any representative,
24 agent, or agency of any of the foregoing.

25 ~~(i)~~

26 (k) "Processing" means cooking, baking, heating, drying,
27 mixing, grinding, churning, separating, extracting, cutting,
28 fermenting, eviscerating, preserving, dehydrating, freezing, or
29 otherwise manufacturing, and includes packaging, canning, jarring,
30 or otherwise enclosing food in a container.

31 ~~(j)~~

32 (l) "Secretary" means the Secretary of the Department of Food
33 and Agriculture.

34 ~~(k)~~

35 (m) "USDA" means the United States Department of
36 Agriculture.

37 *SEC. 6. Section 46009 of the Food and Agricultural Code is*
38 *amended to read:*

39 46009. Any person subject to this act that does not pay the
40 registration fee within 10 days of the date on which the fee is due

1 and payable shall pay a penalty of 10 percent of the total amount
2 determined to be due plus interest at the rate of ~~1 1/2~~ 1.5 percent
3 per month on the unpaid balance.

4 *SEC. 7. Section 46013 of the Food and Agricultural Code is*
5 *amended to read:*

6 46013. Any producer, handler, processor, or registered
7 certification organization subject to this chapter that does not pay
8 the fee within 10 days of the date on which the fee is due and
9 payable shall pay a penalty of 10 percent of the total amount
10 determined to be due plus interest at the rate of ~~1 1/2~~ 1.5 percent
11 per month on the unpaid balance.

12 *SEC. 8. Section 46013.1 of the Food and Agricultural Code is*
13 *amended to read:*

14 46013.1. (a) Every person engaged in this state in the
15 production or handling of raw agricultural products sold as organic,
16 and retailers that are engaged in the production of products sold
17 as organic, and retailers that are engaged in the processing, as
18 defined by the NOP, of products sold as organic, shall register
19 with the agricultural commissioner in the county of principal
20 operation prior to the first sale of the product. All processors of
21 organic agriculturally derived products that are not required to be
22 registered as outlined in subdivision (b) must register with the
23 secretary. Each registrant must annually renew the registration
24 unless no longer engaged in the activities requiring the registration.
25 Each registrant shall provide a complete copy of its registration to
26 the county agricultural commissioner in any county in which the
27 registrant operates.

28 (b) Every person engaged in this state in the processing or
29 handling of processed products pursuant to Section 110460 of the
30 Health and Safety Code, and pet food pursuant to Section 18653,
31 and cosmetics pursuant to Section 111795 of the Health and Safety
32 Code, including processors of alcoholic beverages, fish and
33 seafood, shall register with the State ~~Director of Health Services~~
34 *Public Health Officer*.

35 (c) Registration pursuant to this section shall be on a form either
36 provided by the secretary or approved by the secretary and shall
37 be valid for a period of one calendar year from the date of
38 validation by the secretary or county agricultural commissioner
39 of the completed registration form.

1 (d) The information provided on the registration form shall
2 include all of the following:

3 (1) The nature of the registrant's business, including the
4 categorical products produced, handled, or processed that are sold
5 as organic and the names and registration numbers of those persons
6 for whom they sell product as applicable.

7 (2) (A) For *exempt* producers, a map showing the precise
8 location and dimensions of the facility or farm where the products
9 are produced. The map shall also describe the boundaries of the
10 production area and all adjacent land uses, shall assign field
11 numbers to distinct fields or management units, and shall describe
12 the size of each field or management unit.

13 (B) When the ~~registrant~~ *exempt producer or exempt handler*
14 has not had control of the property being registered for at least 36
15 months, documentation shall be provided from previous owners
16 or managers that shows the 36-month land use history. When the
17 ~~registrant~~ *exempt producer or exempt handler* is not the owner,
18 documentation shall be provided from the owner granting
19 permission for the parcel to be registered as organic by the
20 ~~registrant~~ *exempt producer or exempt handler*.

21 (3) Sufficient information, under penalty of perjury, to enable
22 the secretary or county agricultural commissioner to verify the
23 amount of the registration fee to be paid in accordance with this
24 act.

25 (4) The names of all certification organizations or governmental
26 entities, if any, providing organic certification to them.

27 (5) In the case of *exempt* producers, for each field or
28 management unit, a list of all substances applied to the crop, soil,
29 growing medium, growing area, irrigation water or postharvest
30 wash or rinse water, or seed, including the source of the substance,
31 the brand name, if any, the rate of application, and the total amount
32 applied in each calendar year, for at least the applicable time
33 periods specified in this act.

34 (e) The registration form shall include a separate "public
35 information sheet" or its equivalent that shall include:

36 (1) The name and address of the registrant.

37 (2) The nature of the registrant's business, including the
38 categorical products produced, handled, or processed that are sold
39 as organic.

(3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to the NOP and this act.

(f) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of product sold as organic in the calendar year that precedes the date of registration or, if no sales were made in the preceding year, then based on the expected sales during the 12-calendar months following the date of registration. Unless specified elsewhere the fee is based according to the following schedule:

	Gross Sales	Registration Fee
\$	0 – 4,999	\$ 25
\$	5,000 – 10,000	\$ 50
\$	10,001 – 25,000	\$ 75
\$	25,001 – 50,000	\$ 100
\$	50,001 – 100,000	\$ 175
\$	100,001 – 250,000	\$ 300
\$	250,001 – 500,000	\$ 450
\$	500,001 – 1,000,000	\$ 750
\$	1,000,001 – 2,500,000	\$ 1,000
\$	2,500,001 – 5,000,000	\$ 1,500
\$	5,000,001 – 15,000,000	\$ 2,000
\$	15,000,001 – 25,000,000	\$ 2,500
\$	25,000,001 – and above	\$ 3,000

(1) Any person required to register pursuant to this section whose registration fee would be less than seventy-five dollars (\$75) shall pay an initial registration fee of seventy-five dollars (\$75). Thereafter, the amount of the annual fee shall be as specified above or, according to the applicable classification, as described in paragraphs (2) to (9), inclusive.

(2) Any person selling a multi-ingredient product in which less than 70 percent of the ingredients are organic shall pay a fee of one hundred dollars (\$100) or one-half of the amount that would be due based on the above chart, whichever is more.

(3) Producers that sell processed product shall pay fees based on the value of raw product prior to being processed and the value of any product sold as unprocessed.

1 (4) Any person that packs, repacks, labels, sorts, or otherwise
2 handles any organic product that is outside the jurisdiction of the
3 State ~~Director of Health Services~~ *Public Health Officer* and that
4 does not take title or manage the sale of the product, but provides
5 only handling services for organic product, shall register and pay
6 one hundred dollars (\$100) per year.

7 (5) Commission merchants or brokers that do not take possession
8 or title of the product but arrange for the sale of the product shall
9 register and pay one hundred dollars (\$100) per year.

10 (6) A retail store engaged in the handling or processing of
11 organic products shall register and pay a fee of one hundred dollars
12 (\$100) for each store location that processes organic products
13 onsite.

14 (7) Any person that provides temporary storage or transportation
15 for organic product and does not handle the raw unpackaged
16 product does not have to register.

17 (8) Any person that hires any other person for custom packing
18 or labeling shall register and pay a fee based on the total sales of
19 product custom produced for them as outlined in the chart above.
20 In addition to the required registration information above the person
21 must disclose on the registration form the names of all companies
22 that pack and process for them.

23 (9) Any person required to register pursuant to this section that
24 fits the description of more than one of the persons described above
25 shall pay the greater of the multiple amounts.

26 (10) *The secretary may require any producer, handler,*
27 *processor, or other organic registrant to provide the exact dollar*
28 *amount of gross sales of twenty-five million one dollars*
29 *(\$25,000,001) or more in lieu of the range specified in subdivision*
30 *(f).*

31 (11) *The secretary may require any producer, handler,*
32 *processor, or other organic registrant to submit gross sales by*
33 *commodity and gross sales by acreage.*

34 (g) *The secretary may adopt regulations that supersede the*
35 *terms of this section to the extent reasonably necessary to provide*
36 *an online system of registration for those required to register*
37 *pursuant to this section.*

38 SEC. 9. *Section 46013.2 of the Food and Agricultural Code is*
39 *amended to read:*

1 46013.2. (a) To the extent feasible, the secretary shall
2 coordinate the registration and fee collection procedures of this
3 section with similar licensing or registration procedures applicable
4 to registrants.

5 (b) The secretary or county agricultural commissioner shall
6 deny a registration submission that is incomplete or not in
7 compliance with this act.

8 (c) A registrant shall, within a reasonable time, notify the
9 secretary of any change in the information reported on the
10 registration form and shall pay any additional fee owed if that
11 change results in a higher fee owed than that previously paid.

12 (d) At the request of any person, the “public information sheet”
13 described in subdivision (e) of Section 46013.1 for any registrant
14 shall be made available for inspection and copying at the main
15 office of the department and each county agricultural
16 commissioner. Copies of the “public information sheet” shall also
17 be made available by mail, upon written request. The secretary or
18 county agricultural commissioner may charge a reasonable fee for
19 the cost of reproducing a “public information sheet.” Except as
20 provided in this subdivision, a registration form is exempt from
21 Chapter 3.5 (commencing with Section 6250) of Division 7 of
22 Title 1 of the Government Code.

23 (e) The secretary, in consultation with the California Organic
24 Products Advisory Committee, may suspend the registration
25 program set forth in this section if the secretary determines that
26 income derived from registration fees is insufficient to support a
27 registration enforcement program.

28 (f) A registration is considered legal and valid until revoked,
29 suspended, or until the expiration of the registration.

30 (g) The registration revocation process shall be in conjunction
31 with other provisions of this act. The secretary or county
32 agricultural commissioner’s office may initiate the revocation
33 process for failure to comply with the NOP or this act. Any person
34 against whom the action is being taken shall have the opportunity
35 to appeal the action and be afforded the opportunity to be heard
36 in an administrative appeal. This appeal shall be administered by
37 either the state or county agricultural commissioner’s office.

38 (h) When the registration fee is not paid within 60 days from
39 the expiration date, the account shall be considered closed and the
40 registration voided. A notification shall be sent to the registrant

1 and the certifier, if applicable, notifying them the registrant is no
2 longer able to market products as organic until the account is paid
3 in full.

4 (i) Any producer, handler, processor, or certification agency
5 subject to this chapter that does not pay the fee within 10 days of
6 the date on which the fee is due and payable shall pay a penalty
7 of 10 percent of the total amount determined to be due plus interest
8 at the rate of $1\frac{1}{2}$ 1.5 percent per month on the unpaid balance.

9 *SEC. 10. Section 46014.1 of the Food and Agricultural Code*
10 *is amended to read:*

11 46014.1. (a) Any certification organization that certifies
12 product in this state sold as organic shall register with the secretary
13 and shall thereafter annually renew the registration, unless the
14 organization is no longer engaged in the activities requiring the
15 registration. Registration shall be on a form provided by the
16 secretary, shall include a copy of accreditation by the USDA or
17 proof of application if applicable.

18 (b) Each certification organization shall pay to the secretary an
19 annual registration fee of twenty-five dollars (\$25) for each client
20 they have certified in this state up to a maximum of two hundred
21 fifty dollars (\$250). Any registration submitted by a certification
22 organization, shall be made available to the public for inspection
23 and copying. The secretary may audit the organization's
24 certification procedures and records at any time, but any records
25 of the certification organization not otherwise required to be
26 disclosed shall be kept confidential by the secretary.

27 (c) The secretary and the county agricultural commissioners
28 under the supervision of the secretary shall, if requested by a
29 sufficient number of persons to cover the costs of the program in
30 a county as determined by the secretary, establish a certification
31 program. This program shall meet all of the requirements of this
32 act. In addition, this program shall meet all of the requirements of
33 the federal certification program, including federal accreditation.
34 The secretary shall establish a fee schedule for participants in this
35 program that covers all of the department's reasonable costs of the
36 program. A county agricultural commissioner that conducts a
37 voluntary certification program pursuant to this section shall
38 establish a fee schedule for participants in this program that covers
39 all of the county's reasonable costs of the program. The secretary
40 may not expend funds obtained from registration fees collected

1 under this chapter for the purposes of adopting or administering
2 this program. The certification fee authorized by this subdivision
3 is due and payable on January 1 or may be prorated before the
4 10th day of the month following the month in which the decision
5 to grant the certification is issued. Any person who does not pay
6 the amount that is due within the required period shall pay the
7 enforcement authority providing the certificate a penalty of 10
8 percent of the total amount determined to be due, plus interest at
9 the rate of $1\frac{1}{2}$ 1.5 percent interest per month on the unpaid balance.

10 ~~SEC. 4.~~

11 *SEC. 11.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.